IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12494 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

K.L. PATEL

Appearance:

1. Special Civil Application No. 12494 of 1994

MR VH DESAI for Petitioner No. 1

MR DHARMESH V SHAH for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 02/04/2002

ORAL JUDGEMENT

#. Heard Learned advocate Ms.Sejal K. Sutariya for Mr.V. H. Desai on behalf of the petitioner Corporation and Mr.Darmesh Shah, learned advcoate for respondent workman.

#. In the present petition, the petitioner Corporation has challenged the award passed by the Industrial Tribunal, Baroda in Reference [IT] No.12/1988 dated 18th January, 1994, wherein he tribunal has set aside the order dated 23rd March, 1983 and granted all the benefits in consequence thereof to the respondent workman. Learned advocate Ms.Sejal Sutariya appearing on behalf of the petitioner Corporation has submitted that the industrial tribunal has reappreciated the evidence which was led in departmental inquiry and come to his own conclusion which is beyond purview of the tribunal and therefore, the tribunal has committed gross error in passing such award. She has also submitted that the punishment which was imposed against the respondent workman about stoppage of six increments with permanent effect. Therefore, the tribunal cannot exercise the powers under Section 11-A of the I.D.Act, 1947 because provisions of Section 11-A will only apply in case of punishment of dismissal, discharge or termination and the same is not applicable in case other than dismissal and therefore, the Tribunal has committed gross error in passing such award.

#. Learned advocate Mr.Dharmesh Shah appearing on behalf of the respondent workman has submitted that the tribunal has rightly reappreciated the evidence and come to the conclusion that on the basis of the oral evidence which was led in departmental inquiry, misconduct which was alleged against the respondent workman was not found to be proved. Mr.Shah has also submitted that the tribunal has powers to reappreciate the evidence which was led in departmental inquiry and come to his own conclusion like an appellate authority. This aspect has been considered by the Apex Court in case reported in AIR 1973 SC 1227. Mr.Shah,learned advocate has also submitted that the tribunal is also having powers under Section 11-A of the I.D.Act in case of punishment other than dismissal as decided by this Court in reported decision 1992 [2] GLH 353 and 1992 [1] GLR 432. It is further submitted that a person who is alleged to have injured by the respondent workman by machine tool, who was also working as employee in the workshop. That said Shri Mistri was not examined in departmental inquiry and that aspect has been taken into consideration by the tribunal and ultimately the tribunal has rightly come to the conclusion that misconduct which was levelled against the respondent workman is not found to be proved.

#. I have considered submission of learned advocates for the parties and also perused the entire award passed by the Industrial Tribunal. The respondent workman was

working as Art-B, Tyre Rewinding Plant in Bharuch Division and because of some incident of quarrel with the co-employee by the respondent workman, chargesheet was served on him and after completion of departmental inquiry, punishment of stoppage of six increments with cumulative effect has been imposed by the competent authority on the respondent workman. Aggrieved of this punishment, the respondent workman raised industrial dispute before the Industrial Tribunal which was referred for adjudication on 12th January, 1988. Before the tribunal, statement of claim was filed by the respondent workman vide Exh.3 and reply was submitted by the petitioner vide Exh.14. The alleged incident had occurred on 16th October, 1982. Thereafter, the Industrial Tribunal has examined the merits of the matter. The petitioner Corporation has produced the documents relating to the departmental inquiry vide Exh.18. The tribunal has considered that report which was submitted against the respondent workman that Mr.Variya who had made report was examined in the departmental inquiry, has not stated that he had personally seen the incident and he was not sure whether the respondent workman has attached upon the co-employee. Even in the report dated 5th November, 1982 this fact was not disclosed and thereafter, the tribunal has examined the reply submitted by the respondent workman dated 22nd November, 1982 wherein he explained that incident occurred because he was having repairing tool in his hands and while working, said repairing tools incidentally touched on the body of said J.M.Mistri. However, he denied the allegations made against him. In departmental inquiry, evidence of said Shri Mistri was necessary but who was not examined in the departmental inquiry. Not only that, his statement was not obtained by the reporter and nothing on record about the statement of Shri J. M. Mishtri. Thereafter, the respondent workman was examined on 14th February, 1989, he explained in what manner the incident occurred. Thereafter, deposition of one Mr.Valand came to be recorded before the inquiry officer on 14th February, 1983 who stated that Shri Pathan has made entry in the work diary with regard to blow with repairing tool and accordingly, report is made against the delinquent workman. However, he stated that he is not having any personal knowledge as to the incident in question. Thereafter, said Shri Pathan was also examined on 14th February, 1983 who has also deposed before the inquiry officer that he has not seen the incident. Therefore, ultimately the tribunal has considered all these evidence and in absence of statement of Shri J. M. Mistri, the tribunal has come to the conclusion that

misconduct which was alleged against the respondent workman is not found to be proved. Therefore, according to my opinion, the tribunal has rightly reappreciated the evidence which was led in departmental inquiry and cogent reason has been given in support of the conclusion by the Tribunal. The tribunal is having powers to reappreciate the evidence which wad led in departmental inquiry as held by the Apex Court in case of WORKMEN OF MESSRS FIRESTONE TYRE &RUBBER COMPANY OF INDIA Vs. MANAGEMENT & OTHERS reported in AIR 73 SC 1227. Similarly, even in case of punishment other than dismissal also, this Court has taken view that the labour court or tribunal is entitled to exercise the powers under Section 11-A of the I.D.Act. Therefore, considering the entire facts and circumstances of the case and after perusing the award in question, according to my opinion, the tribunal has not committed any error while passing such award and as such, there seems no jurisdictional error, nor any procedural irregularity committed by the Tribunal and therefore, no interference of this Court is called for under Article 226 and 227 of the Constitution.

Therefore, there is no substance in this petition and hence, this petition is rejected accordingly. Rule discharged. Ad-interim relief, if any, stands vacated. No order as to costs.

Date : 2-4-2002 [H.K.Rathod, J.]

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